



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MAC - 203666

PRELIMINARY RECITALS

Pursuant to a petition filed on November 4, 2021, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Manitowoc County Department of Human Services regarding Medical Assistance (MA), a hearing was held on December 16, 2021, by telephone. The record was held open for 1 day post-hearing to allow petitioner time to submit additional information, which was received and forwarded to the agency.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED] ESS
Manitowoc County Department of Human Services
4319 Expo Drive
Manitowoc, WI 54220

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Manitowoc County.
2. On September 24, 2021, the agency sent a written notice of negative action to the petitioner.

3. The negative action in this case was an order to compel payment of a MA overpayment.
4. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on November 4, 2021.

DISCUSSION

The agency may obtain an order to compel payments from those who have not taken steps to repay a MA overpayment. The process for doing so is found in Wis. Stat. §49.497(1m)(a):

If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order. The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.

The agency issued notice of its action to compel payment. The notice advised petitioner that she had 30 days from the date of the order to appeal. There was no dispute that the tax intercept notice was issued to petitioner's last-known address. While I understand petitioner was going through some difficult times prior to and/or during the time the notice was issued to her, that is not sufficient to establish that the agency has failed to provide the petitioner with an opportunity to be heard in the statutorily mandated fashion. Petitioner argued at hearing that she both did not remember getting the notice and that she filed her appeal earlier than November 4, 2021. The record was held open for 1 day post-hearing to allow petitioner time to submit additional information to show an earlier appeal date, which was received and forwarded to the agency.

The information submitted post-hearing does not show me that petitioner timely filed an appeal on the order to compel notice. In fact, the form she provided is altered from the original form maintained by the Division of Hearings and Appeals (DHA). The form maintained by DHA clearly does not have the boxes checked for filing an appeal for MA or FS like the form she submitted post-hearing; it only references an appeal for W-2. Moreover, she states on page 2 "I know I owe FS and MA but not W2", thus adding to the reason no appeal was created at that time for FS or MA, as no dispute on those issues was raised. Further, the order to compel notice provided her with clear instruction on how to file a timely appeal to dispute that debt; she did not do so. There is no credible evidence to find she filed an appeal on the order to compel notice earlier than November 4, 2021.

The petitioner's appeal was filed 42 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). In other words, I cannot change the outcome here based on any fairness argument. This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

There is no jurisdiction for petitioner's appeal as it was not timely filed.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way 5th Floor, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

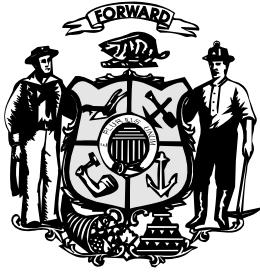
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of January, 2022

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 12, 2022.

Manitowoc County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability